IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL (St.) NO. 3667 OF 2000

Seetaram Ladu Chambhar... ... Appellant.

Versus

Krishna Ladu Chambhar & Ors. ... Respondents.

Mr. A. S.Khandeparkar for the Appellant.

None for the Respondents.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

Heard Shri Khandeparkar for the Appellant. The second appeal is by the original plaintiff. Suit filed by the Appellant / Plaintiff for partition was decreed. In appeal preferred by some of the Defendants, the decree of partition has been set aside and suit filed by the Appellant / Plaintiff has been dismissed on the ground that the suit was not maintainable on account of non-joinder of necessary parties.

2. The appellate Court also observed that some of the properties which should have been subjected to partition were not made subject matter of the suit.

3. After having heard Shri Khandeparkar, learned Counsel for the Appellant, and after perusing the impugned judgment, I find that the learned appellate Court was right in holding that the suit was not maintainable for non-joinder of heirs of real brothers of the Appellant by name Kuso and Govind. In the absence of the said widows, share of the parties in the joint family property could not have been determined. In so far as certain agriculture lands are concerned, appellate Court has held that the purchase was in the name of the three brothers Krishna, Atmaram and the Appellant. Therefore, no fault can be found in the view taken by the appellate Court that the suit for general partition was not maintainable as all the estate of the family and all the necessary parties are not brought on record. Second Appeal is accordingly dismissed with no order as to costs.

Sd/-

(**A. S. OKA, J.**)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 633 OF 2005

IN

SECOND APPEAL (St.) NO. 3667 OF 2000

Seetaram Ladu Chambhar... ... Appellant.

Versus

Krishna Ladu Chambhar & Ors. ... Respondents.

Mr. A. S.Khandeparkar for the Appellant.

None for the Respondents.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

As the second appeal itself is disposed of, this civil application does not survive. Hence rejected.

Sd/-

(A. S. OKA, J.)